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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ROOSEVELT STEVEN PAYNE,

Defendant and Appellant.

B169835

(Los Angeles County
Super. Ct. No. BA233657)

APPEAL from a judgment of the Superior Court of Los Angeles County, Robert J. Perry, Judge. Affirmed and remanded with directions.

Greg M. Kane, under appointment by the Court of Appeal, for Defendant and Appellant.

Bill Lockyer, Attorney General, Robert R. Anderson, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Steven D. Matthews, Supervising Deputy Attorney General, and Laura H. Steuch, Deputy Attorney General, for Plaintiff and Respondent.

Roosevelt Steven Payne was convicted of one count of murder and one count of attempted murder, with true findings on allegations that he personally used and discharged a firearm in the commission of both offenses, that he personally inflicted great bodily injury in the commission of the attempted murder count, and that he committed both offenses for the benefit of a criminal street gang. He was sentenced to state prison for a term of life with the possibility of parole, plus 85 years to life. Payne appeals, contending his confession should have been suppressed because it was obtained by coercion, and that the abstract of judgment must be amended to conform to the actual sentence imposed. We affirm the judgment and remand with directions to issue a corrected abstract of judgment.

DISCUSSION

I.

After the jury was selected but before any evidence was presented, Payne made an oral motion to suppress his confession to the police. His motion was denied, which Payne now contends was prejudicial error. We disagree.

A.

Payne and a cohort, both members of the Hoover gang, approached two men and asked, "Groove, where y'all from?" Lomel Hamilton understood "Groove" as a reference to the Hoover gang and replied, "Swan" (a rival gang). Payne pulled out a gun and began shooting, killing Davele Holloway and seriously injuring Hamilton as he tried to run off. Hamilton identified Payne as the shooter, as did two other witnesses (one did not see the shooting but did see Payne carrying a gun as he approached the victims).

B.

Payne's claim on appeal is the same two-prong argument he made in the trial court -- that the police promised him he could go home if he talked about the offense, and that his "severely limited intelligence" made it impossible for him to knowingly waive his rights. The transcript of the interview defeats these claims:

"Detective Williams: I'm Detective Williams [¶] . . . [¶] . . . [¶] . . . [¶] . . . You know my partner [Detective Winn]? [¶] . . . [¶] . . . You talked to her before?

"Payne: Yes

"Detective Winn: . . . I need to get some information [and] read you your rights, all right? And ask you some questions and you know about what, okay? First I want to ask you some . . . statistical information from you, okay? When you take your braids out?

"Payne: Last night. [¶] . . .

"Detective Williams: Okay. You married?

"Payne: No.

"Detective Williams: You have a girlfriend? [¶] . . . [¶] . . . What's her last name?

"Payne: . . . [¶] . . . [¶] . . . I don't know her last name. I know her first name. [¶] . . . [¶] . . . Jessie."

"

"Detective Williams: . . . What's your mom's last name?

"Payne: (Inaudible).

"Detective Williams: Gray? What's her first name?

"Payne: Cathy.

"

"Detective Williams. Okay. What's your father's last name?

"Payne: Frank.

"Detective Williams: His last name is Frank?

"Payne: "Last name? No, Payne. [¶] . . . [¶] . . .

"Detective Williams: Okay. Where does he live?

"Payne: [H]e in jail now. [¶] . . . [¶] . . . [¶] . . . [¶] . . . [¶] . . . [¶] . . .

"Detective Williams: For what? Do you have any children?

"Payne: No.

"

"Detective Williams: What kind of . . . work do you do?

"Payne: I don't do nothing right now.

"Detective Williams: How old are you?

"Payne: Eighteen.

"Detective Williams: Where have you worked in the past? Never did a job before? . . .

"Payne: New York.

"Detective Williams: Graduate?

"Payne: No. Not yet.

"Detective Williams: What grade you in?

"Payne: Twelfth.

"

"Detective Williams: [W]hat barbershop you go to?

"Payne: [H]air braided [¶] . . . [¶] . . .

"Detective Williams: Belong to any clubs or organizations? What set you with?

"Payne: I ain't with no set, sir. I'm . . . associating with the Hoover Crips. [¶] . . . [¶] . . .

"Detective Williams: Where do you normally hang out at? [¶] . . . [¶] . . . [¶] . . . [¶] . . .

"Payne: I used to hang out with 74th . . . [and] Hoover.

"Detective Williams: What did your friends call you?

"Payne: Tools. [¶] . . . [¶] . . . [¶] . . . [¶] . . . [T]hey call me Snap, too, because I was (inaudible) with my brother.

"Detective Williams: Okay. You use any narcotics, dope, I mean, marijuana, cocaine or anything?

"Payne: (Inaudible.) [¶] . . . [¶] . . .

"Detective Williams: Where do you normally get your marijuana?

"Payne: I get it from my people. [¶] . . . [¶] . . .

"Detective Williams: Your mom gets the dope for you?

"Payne: [S]ometimes she get her own (inaudible) get it (inaudible).

"Detective Williams: You right-handed, left-handed?

"Payne: Right.

"Detective Williams: Do you have any tattoos?

"Payne: My brother's name."

"Detective Winn: Okay . . . I want to talk to you about a murder that occurred back in January of this year. But before I can do that, I need to advise you of some rights, okay? Now I'm gonna read you your rights and then we'll discuss that then, okay? Roosevelt, you have the right to remain silent. Do you understand?

"Payne: Yeah.

"Detective Winn: Anything you say may be used against you in court. Do you understand?

"Payne: Yes, ma'am.

"Detective Winn: You have the right to the presence of an attorney before and during questioning. Do you understand?

"Payne: Yes, ma'am.

"Detective Winn: If you cannot afford an attorney, one will be appointed for you free of charge before any questioning if you want. Do you understand?

"Payne: Yes, ma'am.

"Detective Winn: Okay. Roosevelt, you want to talk to me about what happened?

"Payne: Yes, ma'am.

"Detective Winn: Okay. Do you want to tell your side of the story?

"Payne: Yeah.

"Detective Winn: Okay. Tell me what happened with that murder."

"Payne: One day, I went over to her house

"Detective Winn: You went with Johnny? [¶] . . . [¶] . . .

"Payne: John . . . I don't know his last name. [¶] . . . [¶] . . . [¶] . . . [¶] . . .
I just call him John.

"Detective Winn: What else do you call him?

"Payne: Modie [¶] . . . [¶] . . . That's what everybody else call him.
[¶] . . . [¶] . . . [¶] . . . [¶] . . . [¶] . . . [¶] . . . And some females . . . around the
corner

"Detective Winn: Who were the females?

"Payne: This little girl name Peaches

"Detective Winn: Oh, okay. So you [are] confused. This is not the
homicide that Detective Tizano was talking to you about. [D]o you remember
Detective Tizano? He was talking to you about a homicide case . . . with Modie
. . .

"Payne: Yeah. Yeah.

"Detective Winn: This is not that homicide.

"Payne: Which homicide you talking about?

"Detective Winn: We talking about the homicide you did. [¶] . . . [¶] . . .
Back in January. Now you know what I'm talking about? . . .

"Payne: I didn't do nothing back in January.

"Detective Winn: Okay. You know what? I been pretty (inaudible) with
you. I'm talking about a homicide when the guys were sitting up on the fence and
you walked by and you go, 'What's up Groove' and they ignored you and you
come back Now, I got some pictures here of you and they identified you.
Okay? And that's what I'm talking about. See, don't play any games with me.

"Payne: I'm not trying to play no games.

"Detective Winn: No. Yeah. . . . [T]ell you what. Johnny or Modie,
whatever you call him, he told me you did it. Okay? He told me you did it. I got
independent witnesses who told me you did it. I interviewed witnesses -- I'm
gonna show you I'm not playing no games . . . because I don't want you playing
games. ***I'd just as soon book you down to jail right now.*** [¶] You're eighteen
years old, young man. You're talking murder. We're talking about attempt[ed]
murder. I got three million (inaudible) arrest warrant for your arrest right now.

(Inaudible) lock you up in there and then you decide you would tell me the truth because I'm not gonna sit here and play no games with you. It's 9:30 in the morning. I been here since midnight. You know what that means? I ain't get much sleep last night. And I know you don't care about all that. I ain't gonna play no games with you. You're not gonna sit here and lie to me. Because I'm not gonna listen to it. Is that understood? [Emphasis added.]

"Payne: Yes, ma'am.

"Detective Winn: Now, I'm talking about a murder that happened [in] January Two days after your birthday. Two days after you turned eighteen. So you know what this means? State prison. Now, you want to play games with me because you don't know what I'm talking about I know . . . that you went down and you was walking down the street You walking down the street with Johnnie and Big John or whatever you want to call him and his girlfriend go buy some weed you see (inaudible) what's up Groove they ignored you. That sound familiar to you? . . .

"Payne: Yes, ma'am. [¶] . . . [¶] . . .

"Detective Winn: Okay. They ignored you. You get pissed and you go back and you get a gun and you come back and you with John and you go, 'Where you from, home boy?' And what he tell you '84 Swan' because see, you know, you left one alive? I got one guy that's alive and one that's dead, all right? And you pull the gun and you shoot him. . . . [Y]ou fire six shots and you kill him. All right? So -- do you know what I'm talking about? Does that sound familiar to you?

"Payne: Yes, ma'am.

"Detective Winn: Tell me what happened. I want to hear your side of the story.

"Payne: One day me and John . . . go get some weed on 84th and we saw some thugs, some dudes sitting out in front and . . . Johnnie asked, 'What's up Groove' and I was like and I looked and . . . told Johnnie . . . go get the weed. They come back (inaudible) get some then we saw them across the street throwing up gang signs.

"

"Detective Winn: Okay. You need to back up for a second. You have to do me a favor. I did not understand. . . . [¶] . . . [¶] . . . So tell me what you said.

"Payne: (Inaudible) all this (inaudible) then me and Johnnie went back and we went to go get a gun.

"Detective Winn: You and Johnnie went where?

"Payne: To go get a gun.

"Detective Winn: Where did you go get the gun from?

"Payne: We went back down there and we didn't see nobody.

"Detective Williams: Who got the gun?

"Payne: I did, and we didn't see nobody. Then (inaudible) came back and it was too dark Johnnie banged on 'em like 'where y'all from?' '84 Swans.'

"Detective Winn: [W]ho's idea was it to get the gun

"Payne: Johnnie.

"Detective Winn: . . . Who actually got the gun?

"Payne: (Inaudible).

"Detective Winn: And . . . where did you get it from?

"Payne: From 79th. [¶] . . . [¶] . . . and Vermont. Spare house.

"Detective Winn: [H]ow did you get down there?

"Payne: I was on a scooter and he's on a bike. [¶] . . . [¶] . . . [H]e was on some kind of blue and orange bike and I was on a scooter and my batteries ran down when I go slow, and after that he came back.

"

"Detective Winn: This the first time you killed somebody, Roosevelt?

"Payne: First time.

"Detective Winn: How did you feel about it?

"Payne: I don't feel so good. [¶] . . . [¶] . . . (Inaudible) thinking I was thinking damn, God will punish me for this. I went home talking to my mamma.

"Detective Winn: You told your mother you did it?

"Payne: Huh? I didn't tell my mamma I did that.

"Detective Winn: Who did you tell you did this killing

"Payne: Nobody.

"Detective Winn: You didn't tell nobody? Only you and Johnnie knew? Where's the gun . . . you used, the murder weapon?

"Payne: I don't know now

"Detective Winn: Who did you give it to?

"Payne: I didn't give it to nobody. I didn't give it to nobody.

"Detective Winn: What did you do with it? [¶] . . . [¶] . . . [¶] . . . [¶] . . .
So Johnnie took the gun?

"Payne: Whatever he did with the gun. I don't know where the gun at now.

"

"Detective Winn: Where did you get the gun from?

"Payne: I got it from one of my friends. [¶] . . . [¶] . . . I forgot his name. I always call him by his middle name. [¶] . . . [¶] . . . I forgot his real name. [¶] . . . [¶] . . . Street name is Trip.

"Detective Winn: Trip? Okay. When you guys first went down you and Johnnie and shot (inaudible) girlfriend go get the weed and you guys hit up on him, the guys there, so who's idea was it to go back and get the gun? [¶] . . . [¶] . . .

"Payne: He said somebody need heat, somebody need heat.

"Detective Winn: That's . . . what Johnnie said? You sure about that? Why you say it was all your idea? [¶] . . . [¶] . . . But it was your friend who had the gun, though right?

"Payne: Yeah.

"Detective Winn: Did Johnnie ever have the gun? So he knew you were gonna kill these guys or you were gonna shoot them or do whatever; right?

"Payne: He knew, yeah.

"Detective Winn: Why did you do it?

"Payne: Huh? I don't -- (inaudible) on my mind that day. . . . I don't know why I did it.

"Detective Winn: What I want you to do for me is write out . . . what you just told me.

"Payne: Can I say something? [¶] . . . [¶] . . . I can't spell that good, you know

"Detective Winn: Just write in your own words and we'll go over it and then, you know, if you have problem with a word, ask me what the word is and I'll tell you how to spell it. Is that okay?

"Payne: Uh-huh."

Payne slowly wrote out a statement (the process covers 14 pages of transcript), with the detectives spelling most of the words used by Payne and

asking some follow-up questions during that process. Detective Winn then read Payne's statement to him, as follows:

"On 1-25, me and Johnnie went to the weed spot to get some weed and we saw some blood people. And they said, "Fuck Hoover" . . . and went back. [¶] . . . [A]nd we saw two boys out the alley. Me and Johnnie said, "Where you from?" So Johnnie said, "Where you from?" . . . And then I shot him. We went to get the gun from my friend . . . and he gave me the gun. Then we went and we saw two come from out the alley. Then we went back home. And then we went to [my] house."

There was a further discussion, during which changes were made to Payne's written statement, and the statement was then signed by Payne. When the interview was concluded, Detective Winn told Payne they would be "taking [him] downstairs" and to the jail. In apparent response to a questioning look on Payne's face, Detective Winn asked, "do you think [you] kill somebody and just go home?" After an inaudible response from Payne, Detective Winn reminded him that he had been identified by witnesses and explained that the information the police had would be presented to the District Attorney's office. She told him there was a warrant for his arrest for murder and attempted murder, and that bail was set at \$3 million.

Detective Winn asked Payne whether he did the shooting to "earn [his] stripes." He said he didn't "know what was up with [his] mind that day." Then there was this exchange:

"Detective Winn: You seem surprised that you're being booked. I know you did this murder. And you . . . told me you did this murder

"Payne: I know I (inaudible) go home (inaudible).

"Detective Winn: It just hit you or something? [Y]ou're eighteen years old and, obviously, you didn't think about what you did (inaudible) pull the trigger but I can't make any promises to you, what's gonna happen what's not gonna happen. . . . I need that gun Do you have any idea where it is?

"Payne: I don't know idea where it is"

C.

We summarily reject Payne's contention that the police deceived him by suggesting his confession would lead to his release. As our lengthy excerpt from the transcript of the interview shows, no promises of any kind were made to Payne before he confessed. Indeed, the most that can be said is that the detectives told Payne they didn't want to play games, and that they were tired, and that they would be happy to terminate the interview and take Payne directly to jail if he didn't want to talk.

We also reject Payne's suggestion that he didn't understand what was happening. To begin with, he confessed in detail before the detectives asked for his written statement, and we must therefore reject Payne's effort to demonstrate his low intelligence and poor spelling by reference to the difficulty he had in writing out his confession. Although it appears Payne is barely literate and could not spell even simple words, there is nothing in the record to suggest he had any trouble understanding his rights, or understanding the questions posed by the detectives, or in waiving his rights and providing his oral answers. The fact that Payne might have been surprised when he was not allowed to go home cannot change the fact that he voluntarily chose to talk to the police and to confess to the crime.

In short, we agree with the trial court that there was no "implied promise of leniency or a direct promise of leniency," that this was a case of "perfectly permissible police behavior," and that the confession was voluntary. It follows that the confession was properly admitted. (*People v. Massie* (1998) 19 Cal.4th 550, 576; *People v. Memro* (1995) 11 Cal.4th 786, 827; *Colorado v. Connelly* (1986) 479 U.S. 157, 169-170 [government coercion is a necessary predicate to a finding that a confession is involuntary]; *U.S. v. Chischilly* (9th Cir. 1994) 30 F.3d 1144, 1151; *U.S. v. Kelley* (9th Cir. 1992) 953 F.2d 562, 564-565.)

II.

Payne contends, the Attorney General concedes, and we agree that the abstract of judgment should be corrected to show that his sentence on the attempted murder count was for a term of life *with* the possibility of parole, not (as it shows) life without parole.

DISPOSITION

The judgment is affirmed, and the cause is remanded to the trial court with directions to issue a corrected abstract of judgment reflecting that Payne's sentence on count 2 is for a term of life *with* the possibility of parole.

NOT TO BE PUBLISHED.

VOGEL, J.

We concur:

ORTEGA, Acting P.J.

MALLANO, J.